

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

PETER MILLER, CLIFFORD HOYT, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.

Plaintiffs,

V.

PATRICK TREADO and CHEMIMAGE CORP.

Defendants.

Case No. 05-10367 RWZ

DEFENDANTS' MOTION FOR HEARING ON PENDING MOTIONS

Defendants ChemImage Corporation and Patrick Treado (collectively “Defendants”) respectfully request a hearing at the Court’s earliest convenience on the motions presently pending before the Court, namely Defendants’ Motion For Summary Judgment [Docket No. 134], Plaintiffs’ Motion For An Extension Of Time To Respond To Defendants’ Motion For Summary Judgment [Docket No. 137], and Plaintiffs’ Motion To Dismiss Without Prejudice [Docket No. 132]. Plaintiffs assent in part to this motion, in that they assent to a hearing on their motions, but not the motion for summary judgment.

In support of this motion, Defendants state as follows:

1. This patent case is scheduled for a bench trial beginning September 10, 2007, with a final pretrial conference scheduled for August 15. All parties believe, however, that the case can and should be resolved before trial – Plaintiffs submit that the case should be dismissed without prejudice (*see* Docket No. 132), while Defendants submit that summary judgment should be granted in their favor (*see* Docket No. 134), or that the case should be dismissed with

prejudice (*see* Docket No. 138 – Defendants’ Opposition To Plaintiffs’ Motion To Dismiss Without Prejudice).

2. Under the applicable Local Rules, pretrial deadlines are imminent, with pretrial disclosures due July 16 and the Pretrial Memorandum due August 8, followed by the final Pretrial Conference on August 15. A decision on the pending motions will likely avoid the significant burden on the Court and the parties that these deadlines and the subsequent bench trial would involve. Accordingly, Defendants request a hearing on the pending motions at the Court’s earliest convenience.

3. Pursuant to Local Rule 7.1, the undersigned counsel for Defendants has conferred with counsel for Plaintiffs by telephone and e-mail in a good faith attempt to resolve or narrow the issue presented herein. Plaintiffs assent to a hearing on their pending motions, i.e. their motion to dismiss without prejudice and their motion for an extension of time to respond to the motion for summary judgment. Plaintiffs do not assent to a hearing on Defendants’ motion for summary judgment, at least not before the Court rules on the other pending motions, Plaintiffs depose Defendants’ experts, and Plaintiffs file an opposition to the summary judgment motion. Defendants submit that Plaintiffs are merely seeking to avoid a decision on the motion for summary judgment, because they have no plausible substantive response to that motion. *See* Docket No. 138 – Defendants’ Opposition To Plaintiffs’ Motion To Dismiss Without Prejudice. Accordingly, Defendants request a hearing on all of the pending motions.¹

¹ Defendants also note that they have offered to make their expert witnesses available for deposition, in accordance with Fed. R. Civ. P. 26(b)(4) (which requires that Plaintiffs “pay the expert a reasonable fee for time spent responding to discovery”). As yet, Plaintiffs have refused this offer. Defendants have urged Plaintiffs to proceed with the depositions so that proceedings (including resolution of the motion for summary judgment) may not be delayed.

4. Counsel for Defendants are available for a hearing on all dates during the next four weeks, except the following: July 17-20, and 26. Lead counsel for Plaintiffs has indicated that, during the next four weeks, he is available for a hearing only on July 16 and the morning of July 25, but that he will endeavor to make himself available should the Court schedule a hearing on another date.

WHEREFORE, Defendants respectfully request that the Court schedule a hearing at its earliest convenience on all pending motions, so that this matter may be resolved without further delay.

Respectfully submitted,

Date: July 11, 2007

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick (BBO # 564324)
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
857.488.4220

Paul D. Weller (admitted *pro hac vice*)
Kenneth L. Racowski (admitted *pro hac vice*)
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103
215.963.5000

Counsel for Defendants,
Patrick Treado and ChemImage Corp.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (ECF) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on the above date.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick